



**State of Idaho**

**DEPARTMENT OF WATER RESOURCES**

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

*Eastern*

July 12, 2000

DIRK KEMPTHORNE  
GOVERNOR

KARL J. DREHER  
DIRECTOR

Doug Rosenkrance  
Watermaster Dist. 34  
P.O. Box 53  
Mackay, ID 83251

**RECEIVED**

**JUL 17 2000**

Department of Water Resources  
Eastern Region

**RE: TRANSFER VS. EXCHANGE**

Dear Doug:

This letter follows up our discussion yesterday concerning several Temporary Change Applications which were submitted to the department in late June of this year. You specifically inquired about the application submitted in the name of Herb Whitworth.

We previously discussed the Whitworth application and other applications on June 21, 2000. I advised that the Whitworth application was not complete and could not be adequately reviewed or approved for the following reasons:

1. The application proposed to "trade" groundwater located below Mackay Reservoir for surface water above the reservoir. Such a proposal is an "exchange", not a transfer, and can not be considered under the drought declaration in Butte and Custer counties.
2. The proposal appears to "unstack" surface water rights above the reservoir with potential for enlargement in use of the stacked rights.
3. The acreages don't relate to each other in amount making enlargement analysis difficult at best.

Section 42-222, Idaho Code, authorizes a change in the point of diversion, place of use, nature of use and season of use of a water right which changes are commonly referred to as a transfer. Section 42-222a, Idaho Code, is similar to the provisions of section 42-222, but shortcuts the time associated with the approval of a temporary transfer filed in connection with a drought declaration in an area. Neither section 42-222 or 42-222a, Idaho Code, provides for "trading" one water right or part thereof for another.

Section 42-240, Idaho Code, provides for the "exchange" of water rights. In general terms, an exchange is the "trading" of one water right for a different water right such as the Whitworth proposal. The department can consider an exchange proposal, but the process is different than for a transfer or temporary transfer. An exchange proposal must be filed on an "Application for Exchange of Water" form and must describe the details of the rights involved and the terms of the proposed exchange. Upon receipt of a complete exchange application, the code requires the department to publish notice of the application.

You described that since the Big Lost River is now "broken" and being administered in two parts, the need to trade water above the reservoir for water below the reservoir has subsided. I am forwarding an Application for Exchange of Water and instructions, however, for the use of waterusers in the basin who may wish to submit future exchange proposals. The time involved in an exchange can be lengthy, especially if an exchange is protested and requires an administrative hearing. Hence, I suggest that waterusers in the basin who are interested in seeking an exchange, file the application and get the process started.

Thank you for your assistance in passing this information on to waterusers in the water district. If you have questions or if we can be of assistance, please feel free to contact the department.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Glen Saxton". The signature is fluid and cursive, with the first name "L." being small and the last name "Saxton" being larger and more prominent.

L. GLEN SAXTON, Chief  
Water Allocation Bureau

Encl: 2

c: ✓ IDWR - Region  
Tim Luke  
Skip Jones  
Norman C. Young